

MINUTES
OF
THE UTAH RADIATION CONTROL BOARD
March 3, 2006
DEQ Building #2
Conference Room 101
168 N 1950 W
Salt Lake City, Utah 84114-4850

BOARD MEMBERS PRESENT

Karen S. Langley, M.S., Chair
Stephen T. Nelson, Ph.D., Vice Chair
Dianne R. Nielson, Ph.D., Director of DEQ
Dane Finerfrock, Executive Secretary
Kent J. Bradford, P.G.
Rod O. Julander, Ph.D.
Linda M. Kruse, M.S.
Joseph K. Miner, M.D., M.S. Ph.D.
Gregory G. Oman, D.D.S., B.S.
Robert S. Pattison, B.S.
John W. Thomson, M.D.

PUBLIC

Nicole Cline, Tooele County
Sarah Fields, Sierra Club
Dave Frydenlund, IUC (USA) Inc.
Mark LeDoux, EnergySolutions, LLC
Chris Lilley, Clean Harbors
Tye Rogers, EnergySolutions, LLC
James O'Rely, Public

BOARD MEMBERS ABSENT/EXCUSED

Joette E. Langianese, Commissioner
Dan L. Perry, B.S.

DRC STAFF/OTHER DEQ MEMBERS

PRESENT

Patricia Adams, DRC Staff
Craig Jones, DRC Staff
Laura Lockhart, AG
Loren B. Morton, DRC Staff
Yoli Necochea, DRC Staff
Fred Nelson, Attorney for DEQ
Raymond Nelson, DRC Staff

GREETINGS/MEETING CALLED TO ORDER

The Utah Radiation Control Board convened in DEQ Building #2, Room 101, 168 North 1950 West, Salt Lake City, Utah. Karen S. Langley, Chair, called the meeting to order at 2:00 p.m. She welcomed the Board Members and the public. Karen Langley indicated that if the public wished to address any items on the agenda, they should sign the public sign-in sheet. Those desiring to comment would be given an opportunity to address their concerns during the comment period.

I. APPROVAL OF MINUTES (Board Action Item)

a. Approval of the Transcript from the January 26, 2006 Board Meeting

Karen S. Langley, Chair, asked Fred Nelson to provide guidance as to what was transcribed at the January 26, 2006 meeting.

Fred Nelson said at the last Board meeting, HEAL Utah indicated they would be filing a Request for Consideration. Apparently HEAL Utah decided not to file, because we have not received it. They did file a Petition for Review of the Board's decision in the Utah Court of Appeals. The transcript represents the meeting of the Board and the matter as quoted before the Board. Because an appeal has been filed, Board Members are still in an adjudicative capacity. If the issue is remanded to the Board, the Board would have to act on the issue further. The Board should maintain its role as an adjudicative body.

Fred explained the January 26, 2006 transcript of the Board meeting could be approved for the purpose of the minutes.

Karen Langley, Chair, asked for a motion from the Board to approve the transcript of the January 26, 2006 Board meeting.

**MOTION MADE BY ROD O. JULANDER, TO APPROVE THE
TRANSCRIPT OF JANUARY 26, 2006, SECONDED BY
KENT J. BRADFORD.**

**THERE WAS ONE ABSTAINMENT TO THE VOTE BY LINDA M.
KRUSE, WHO WAS NOT IN ATTENDANCE AT THE LAST
BOARD MEETING.**

MOTION CARRIED AND APPROVED

II. RULES

a. R313-32, "Medical Use of Radioactive Material"

Gwyn Galloway, Health Physicist, addressed the Board on a rulemaking action for rule "R313-32, "Medical Use of Radioactive Material." Gwyn said the rule needed to be modified because the U.S. Nuclear Regulatory Commission (NRC) had made changes to national regulations. The

NRC's changes mean the Utah Radiation Control rules must be modified to meet NRC's compatibility requirements. Changes to NRC's regulations include modifications to the training and experience requirements for personnel who use and supervise the use of radioactive materials in medical use.

Gwyn explained that NRC's revision to the requirements for the medical use of radioactive materials was limited to the sections regarding training for authorized user; authorized nuclear pharmacists; authorized medical physicists; and radiation safety officers. Consequently, the proposed changes to DRC's rules are also limited in scope. The proposed changes to DRC's rules will meet the compatibility requirements of the NRC, and will not be more restrictive than the federal requirements.

RECOMMENDATION: The Executive Secretary recommended the Board approve the proposed changes go-forward for a 30-day public comment period starting on April 1, 2006.

MOTION MADE BY STEPHEN T. NELSON, TO APPROVE THE CHANGES TO R313-32 AND THAT A 30-DAY PUBLIC COMMENT PERIOD BEGIN ON APRIL 1, 2006, SECONDED BY GREGORY G. OMAN.

MOTION CARRIED AND PASSED UNIMOUSLY

III. RADIOACTIVE MATERIALS LICENSING/INSPECTION
No Items

IV. X-RAY REGISTRATION/INSPECTION (Board Action Item)
No Items

V. RADIOACTIVE WASTE DISPOSAL (Board information items)

a. Introduction of EnergySolutions LLC

Tye Rogers, Compliance, Bulk Waste and Waste RSO for EnergySolutions LLC (formally known as Envirocare of Utah Inc.), informed the Board that on February 2, 2006 BNG America, Envirocare of Utah Inc., and Sciencetech D&D joined to form EnergySolutions LLC. Together they have significant technologies and services in the nuclear, waste-management industry.

Tye said that EnergySolutions LLC will be a national energy services company that will be headquartered in Salt Lake City, Utah. When the

transaction is complete, they will manage over 1,000 employees in 14 states with operating support facilities in Virginia, South Carolina, Massachusetts, Tennessee, Washington, Connecticut, Idaho and Utah.

Tye explained that EnergySolutions' disposal site, located in Clive, Utah will not be impacted by this transaction. The facility will continue to only dispose of low-level, Class A waste, as permitted by Utah's license.

Tye stated that effective immediately, Sciencetech D&D and Envirocare of Utah LLC will be operating as EnergySolutions LLC. He said BNG America, upon completion of the transaction within the next several weeks, will also be operating as EnergySolutions LLC. Upon the joining of the companies, EnergySolutions LLC will employ over 2,000 people worldwide--in 40 states, as well as in the United Kingdom.

b. Clean Harbors Environmental Services Inc.

Dane Finerfrock, Executive Secretary, informed the Board that Clean Harbors Environmental Services Inc. submitted a letter on January 30, 2006. The letter formalizes their intent to apply for a license to become a Class A, low-level, radioactive disposal-facility.

Public Comment:

Nicole Cline, Planning and Economic Development Advisor for Tooele County, commented that as of September 2005 Tooele County has changed their position with respect to hazardous-waste industries and the dumping of low-level radioactive waste into CERCLA tops, RECLA waste streams, and PCB's. Nicole explained that Tooele County's Planning Commission and the Board of Planning Commissioners put-together a revised ordinance, in which Tooele has prohibited any new facilities into Tooele County. Tooele County is using the word "facility" as defined in title 19.

Tooele County's new ordinance has reduced the size of the hazardous-waste corridor in the west desert. Clean Harbor's application will be in violation of Tooele County's ordinance. Nicole said Tooele County wanted the Board to be aware of the County's position on Clean Harbor's license application.

Dianne Nielson, DEQ Director, said in the past when applications have been considered by the Board, county commissioners have issued a determination as to whether they would grant or would not grant approval. She said that because of the new ordinance, the County would not be issuing a determination, and the County's new ordinance would not allow Clean Harbor's facility to be approved by the County.

Nicole said Dr. Nielson was correct. In the past, the County's process was to issue a temporary "condition use permit." The applicant would demonstrate a need in the market for waste that was not being accepted or an increase in their current, waste stream. This would justify building a new facility to the County. The applicant must also justify locating the facility in Tooele County. However, the County has restructured the entire process. The new ordinance allows existing facilities and existing waste streams to expand for existing waste facilities. The County will not allow "crossing the waste," nor will it allow new facilities to be built in Tooele County.

Dr. Nielson asked Nicole Cline if Tooele County had notified Clean Harbors that the County's new ordinance prohibited the County from approving Clean Harbors application.

Nicole said the facility manager at Grassy Mountain had been notified, and the facility manager had notified Clean Harbors of Tooele County's new ordinance.

Discussion by Board Members and Counsel from Fred Nelson:

Dianne Nielson, DEQ Director, said State law requires legislative-gubernatorial approval; siting review and license approval by the Division of Radiation Control, on behalf of the Board; and local government approval (in this case the Tooele County Commission). Dr. Nielson asked Fred Nelson, Attorney for DEQ, if by virtue of the new County ordinance, it would be sufficient for the Board and the Division to site the new County ordinance as a reason not to proceed with Clean Harbor's application? In addition, if the Board, ultimately, granted the license, it would be irrespective of the legislative gubernatorial approval, and the license would also be irrespective to the County ordinance.

Fred Nelson, Attorney for DEQ, said the existing statute does not give a sequence for when a company can apply for a license from the Board. The statute requires that approval is obtained from (1) the county, (2) the legislative jurisdiction, and (3) the Board. If Clean Harbor's license is granted, there would need to be conditions for approval. The conditions would have to include obtaining legislative gubernatorial approval, and local government approval.

Dianne Nielson thanked Fred Nelson for the clarification.

c. “Order and Findings of Fact and Conclusions of Law” – HEAL Utah Appeal

Dane Finerfrock, Executive Secretary, said at the end of the January 26, 2006 Board Meeting the Board proposed an “Order and Findings of Fact and Conclusions of Law.” Dane said Fred Nelson, Attorney for DEQ, prepared the “Order and Findings of Fact and Conclusions of Law” and Chairwoman Langley signed the document. Copies of the signed document are in the Board’s supplemental packet.

d. Draft License Amendment 23 for EnergySolutions LLC

Dane Finerfrock, Executive Secretary, said as a result of the Board Meeting on January 26, 2006 and the Board’s revision to the proposed “Order and Findings of Fact and Conclusions,” the DRC has corrected Draft License 23. Dane said Board Members had a copy of license amendment 23 in the Board packet, and the license incorporates the Board’s order.

e. Petition for Review in the Utah Court of Appeals – HEAL Utah

Dane Finerfrock, Executive Secretary, said he had given Board Members a copy of Heal Utah’s petition to the Utah Court of Appeals. The petition requests the Utah Court of Appeals to review the Board’s action.

Karen Langley, Chair, asked Fred Nelson, Attorney for DEQ, to give explanation and instruction on the context of Heal Utah’s appeal. Karen requested Fred Nelson to also instruct the Board on the appeal process.

Fred Nelson, Attorney for DEQ, explained that the process before the Court of Appeals was Heal Utah’s initial petition for review. Within a short time period there would be a docketing statement filed. The docketing statement will define specific issues that will be presented to the Court of Appeals. During this time, transcripts from the Utah Radiation Control Board (URCB) Meeting and documents that were filed with the URCB will be prepared into a record and indexed. The record and index will be given to the Court of Appeals.

The record and index will be used by the Court of Appeals to define a briefing schedule. HEAL Utah will prepare and submit a briefing to the Court. At this point, the Utah Radiation Control Board (URCB) will have an opportunity to file a response. It is most likely, EnergySolutions will file a petition to intervene. EnergySolutions’ petition to intervene will be granted, in all likelihood, by the Court, because EnergySolutions has a

legal interest in the URCB. Then the Court will set a date for arguments and there will be full, oral arguments. The arguments are usually about 20 minutes for each side. The Court will issue an opinion and address the issues in the document statement. Until the URCB is able to view the document statement, the Board will not know the specifics of what is being appealed by Heal Utah. Fred said once Heal Utah submits the document statement, he would obtain a copy for the URCB.

Karen Langley, Chair, asked Fred to explain the process of the URCB filing a response?

Fred Nelson, Attorney for DEQ, said the Attorney General's Office will write and submit the URCB's response to the Utah Court of Appeals. He said depending on what the issues were, he may be able to provide the URCB with a copy of the petition for review.

Linda Kruse, URCB Member, asked Fred, if there would be a time frame for the URCB's response to the Court of Appeals.

Fred Nelson said the URCB would need to respond within 30 days of Heal Utah's petition being filed. The Court will set a date for the URCB's response and for the briefing schedule. The process could take from six months to a year.

Fred Nelson, Attorney for DEQ, said there was another matter pending before the Utah Court of Appeals that would be of interest to the Utah Radiation Control Board (URCB). He said last Tuesday there was an argument on an appeal from the Utah Air Quality Board on the question of "standing." The Utah Supreme Court's decision on "standing," before the Utah Air Quality Board, will directly affect the way the URCB deals with "standing issues." The Utah Supreme Court is looking at the Utah Air Quality Board's case, as a way to give guidance to regulatory Boards. "Standing" is an issue struggled with every time the Court deals with a decision to intervene. The Utah Air Quality Board's case has completed the briefing process, and it has completed the oral arguments. Fred said he would give the URCB a copy of the Courts opinion once it is issued.

Dianne Nielson, Director of DEQ, asked Fred to clarify how the Court will consider Heal Utah's petition.

Fred Nelson, Attorney for DEQ, said there are two ways the Courts could consider the petition. If it were reviewed informally, the District Court would consider the evidence and make an initial determination. Because the URCB is a formal proceeding, the Court will use a panel review standard.

The Court will use a “correctness review” to review the URCB’s decisions that are strictly based on questions of law. If the Board’s decision is an application of the facts or interpretations of regulations then deference is given to the Board’s decision. If there is a question of due process, that would be considered a question of law. Deference will be given to the URCB, if there are questions or interpretations of rules.

Dianne Nielson, Director of DEQ, cautioned URCB Members not to talk about the issues--she said it was important not to be involved in discussions of the issues during the Court’s review.

Fred Nelson, Attorney for DEQ, said the Utah Court of Appeals may decide to refer the matter back to the URCB. If there is a question the Court considers to be unresolved, the Court will refer the question back to the “initial finding body” to make the decision, and give the decision to the Court. He said the possibility of unresolved questions is another reason to maintain the URCB’s judicial posture. He cautioned the URCB Members not to make comments to the public that relate to this matter, until it is finally resolved.

VI. URANIUM MILL TAILINGS UPDATE (Board Information item)

a. Sierra Club Regarding International Uranium Corp., (IUC), Blanding, Utah

Sarah Fields, Glen Canyon Group, said for a number of years she had been involved in uranium mill issues, under the NRC. Sarah said White Mesa Mills is her area of focus because it is the only operating mill in Utah. Sarah said she had been involved in the recent application process by IUC.

Sarah said she was concerned with the availability of licensing records from the Division of Radiation Control. She said that she hoped the Board Members had read the briefing she provided regarding her concerns. She said since 1999, the NRC has made licensing documents and correspondence “readily available” to the public. In contrast, the DRC relies fully on GRAMA requests. The DRC does not make documents available on their web site. The Division posts their preliminary decisions on applications on the DRC Web site. Under the NRC, this is similar to posting a notice in the Federal Register, and the public would have the opportunity to pursue an adjudicated proceeding. She said regulatory agencies cannot do their jobs properly without obtaining meaningful, public input. There are documents that the public does not have access to, because they are not part of the application. Consequently, the public cannot do their job without having “ready access” to licensing records. She said that she came to the conclusion that the Board needs to organize a

committee to structure a better way to make an index and the documents available to the people of San Juan County and in Grand County, Ticaboo. Otherwise every few weeks, the public must send GRAMA requests in order to find out what is going on.

Sarah Fields said her other concern was that the public was not being responded to by DRC in a timely manner for GRAMA requests. Also, she said the DRC does not notify the public as soon as it receives an application. For example, months later the public was notified of the IUC application, after the Division had made a determination. She said she also wanted clarification on DRC's policy on responding to "concerned letters." She said whenever she wrote a letter to the NRC, expressing a concern, she would get a response. She said sometimes it would be months before she received a response, but eventually she would get a response. She said it may not be the response she wanted, but she would always receive a written, considered response. She said Dane Finerfrock had received several of her letters. She said she wanted to understand DRC's policy.

She said during the last legislative session a number of things came up. One of the issues was a requirement to "post a bond," if someone wished to challenge a decision before the Board. Also, there were proposed changes to GRAMA.

Dane Finerfrock, Executive Secretary, responded to Sarah Fields. He said the Division was in the early stages of posting applications, interrogatories, statement of basis, safety evaluation reports, and draft licenses on the Web.

Dianne Nielson, Director of DEQ, said the bond requirement did not pass the Utah State Legislature. She said it is important to talk to your legislative representative on important issues, and make your opinion known.

VII. OTHER DIVISION ISSUES

VIII. PUBLIC COMMENT

IX. OTHER ISSUES

Next Board Meeting – April 7, 2006, Department of Environmental Quality, Building 2, Room 101, 168 N 1950 West, Salt Lake City, Utah.

THE BOARD MEETING ADJOURNED AT 3:10 P.M.